In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-94

JAMES LARRY PENNINGTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on April 20, 1971. A petition for rehearing was denied on June 8, 1971. Mr. Justice Black extended the time for filing a petition for a writ of certiorari to July 19, 1971, and on July 17, 1971, the petition was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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QUESTIONS PRESENTED

1. Whether the inventory of petitioner's automobile pursuant to local police procedures, prior to the impounding of his car after his arrest for reckless driving, constituted an "unreasonable search" in violation of the Fourth Amendment.

2. Whether the testimony of two F.B.I. agents, concerning statements made to them by petitioner, was improperly admitted.

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted of interstate transportation of a firearm by a felon in violation of 15 U.S.C. (1964 ed.) 902. He was sentenced to imprisonment for two years.

In the early morning hours of October 18, 1965, two Miami Beach police officers observed an automobile traveling at a high, unlawful rate of speed (Tr. 21–22, 56–57, 118–119, 128–129). After a high speed chase over a distance of some 25–30 city blocks, the officers succeeded in stopping the vehicle, which was driven by the petitioner (Tr. 24, 58, 131). Petitioner, who had a duplicate Georgia driver's license, but no papers for the car, was placed under arrest for reckless driving (Tr. 25–26, 61–62, 121, 131). When a second officer (Wilson) arrived, the arresting officer said that he had called the wrecker (Tr. 62–63). Officer Wilson then walked to defendant's car and searched it for valuables, for papers indicating ownership and "for any guns or anything else that could be

used against us" (Tr. 63). A loaded gun was found in the car and seized (Tr. 45, 64, 124, 133). Petitioner was taken to the police station and a wrecker towed the car away (Tr. 64).

Officers Young and Wilson testified that it was the customary procedure in Miami Beach to take a person arrested for reckless driving to the police station where he could post a cash bond, and to impound the car (Tr. 26, 61, 122–123, 132). Since the City of Miami used commercial wreckers to remove impounded autos, the local police procedures required that an inventory of the contents of the vehicle be taken, in the presence of the driver, before releasing the car and its contents to the wrecking company, from whom the driver would later recover his car and its contents (Tr. 27–28, 61–62, 133). A panel of the court of appeals originally reversed petitioner's conviction (Pet. App. 10a–18a) on the ground that the seizure of the weapon was unlawful since a search would not be a necessary incident to a traffic violation and was not necessary to protect the officers.

Subsequent to this Court's decision in *Chambers* v. *Maroney,* 399 U.S. 42, the court of appeals granted the government's petition for rehearing, withdrew its earlier opinion and substituted a new opinion which affirmed petitioner's conviction (Pet. App. 1a–8a). It held that the pistol was not the fruit of an unlawful search or seizure since the real purpose of the inventory which uncovered the pistol was the protection of personal effects contained in an automobile lawfully impounded (Pet. 7–8a).

ARGUMENT

1. The final ruling of the court of appeals as to the validity of the seizure of the weapons was correct since the evidence clearly established that it was normal police procedure to make an inventory of a car prior to impounding it after its driver had been arrested for reckless driving.

The inventory procedure was designed to protect the owner of the vehicle as well as the police, and was not, in a situation such as this, an attempt to engage in a "fishing expedition" to discover contraband or evidence of a crime. In addition, in this case, the officers were justified in searching the car for evidence of ownership since petitioner produced none. Under these circumstances, the discovery of the pistol was not the result of an "unreasonable search" in violation of the Fourth Amendment. See *Chambers* v. *Maroney*, 399 U.S. 42.

2. At trial, it was shown that petitioner had purchased the gun in Atlanta on July 1, 1965 (Tr. 175). There was also testimony that, in October 1966, petitioner voluntarily responded to a request from the F.B.I. office in Atlanta to discuss matters unrelated to his 1965 arrest in Miami. During the course of the discussion, after petitioner had been given warnings as to his rights, petitioner stated in reference to a question about the Miami incident, that he did not know that it was a felony for a convicted felon to transport a pistol in interstate commerce. He did not then say he had sold the gun to one Pridgen (Tr. 164–165, 167, 170, 172). Wayne Pridgen, a friend of petitioner's, testified for the defense that he had bought

the pistol from petitioner in late summer, 1965 (Tr. 188), and brought it with him when he came to Miami with petitioner without informing petitioner of the presence of the gun (Tr. 189–190). Pridgen stated that he had placed the gun in the glove compartment of the car rented by petitioner while his own car was being serviced, again without notifying petitioner of the presence of the gun (Tr. 191, 193).

Petitioner contends (Pet. 14–15) that it was error to admit the F.B.I. testimony in the government's case in chief arguing that the testimony had little probative value. The testimony did, however, tend to show petitioner's continued ownership in Miami of the gun purchased in Atlanta and was therefore proper evidence. Petitioner also argues that because of the "heroic aura accorded the F.B.I. in the mind of the public" (Pet. 15), the jury might have given undue weight to the agent's testimony. The trial judge, however, instructed the jury that extra-judicial statements allegedly made by petitioner were to be viewed with caution.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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